IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3856 OF 2003

Pravin Dattatraya Talekar ..Petitioner.

Vs.

State of Maharashtra & Ors. ..

Respondents.

...

Mr. Ulhas Naik for the Petitioner.
Mr. C.R. Sonawane, Assistant Government Pleader for Respondent Nos.1 to 4.

....

CORAM: KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

17th April, 2006.

P.C. (Per **Dr. D.Y CHANDRACHUD, J.**):

1. Rule, returnable forthwith. The learned Assistant Government Pleader appearing for Respondent Nos.1 to 4 waives service. By consent taken up for hearing and final disposal.

2. The claim of the Petitioner of belonging to the Bhope Tribe which is recognized as a Nomadic Tribe in the list of Nomadic Tribes for the State of Maharashtra has been rejected by the Scrutiny Committee by its order dated 21st February, 2003. The

Petitioner was initially granted a caste certificate on 28th May, 1998 and was selected for appointment as a clerk by the MPSC and came to be allotted to the Food and Civil Services Department of the State Government. The caste certificate was referred to the Second Respondent for verification. The Second Respondent invalidated the claim of the Petitioner by an order dated 13th February, 1999 which was challenged in writ proceedings before the Aurangabad Bench of this Court. By an order dated 30th March, 2000 that writ petition was disposed of by remitting the matter back to the Second Respondent for a fresh decision on the claim of the Petitioner in the light of the judgment of the Supreme Court in **Madhuri Patil v. Additional Commissioner, Tribal Development** (AIR 1995 SC 94). The Second Respondent caused an enquiry to be carried out by the vigilance cell, a copy whereof was forwarded to the Petitioner. Thereafter the Petitioner filed a reply before the Second Respondent. On 27th September, 2000 the Second Respondent invalidated the claim of the Petitioner once again. That order was challenged in a fresh petition, being Writ Petition 5824 of 2000 in which it has been stated, that this Court once again directed the Scrutiny Committee to decide the matter afresh in accordance with law. The grievance of the

Petitioner is that the Second Respondent has once again invalidated his claim without affording to him an opportunity of being heard. The second grievance is that ex facie, the order of the Scrutiny Committee does not disclose any application of mind to the report of the vigilance cell which indicated that the Petitioner does belong to the Bhope community.

3. Though this Petition was filed as far back as on 3rd June, 2003, no reply has been filed thereto on behalf of the Respondents. Hence, for the purposes of these proceedings we have to proceed on the basis, that the claim of the Petitioner to the effect that he was not afforded an opportunity of a personal hearing by the Scrutiny Committee is well founded. In the Petition as amended, it has been averred that he had remained present before the Scrutiny Committee on 1st July, 2002. Thereafter he was called upon to remain present on 16th August, 2002 at the office of the Additional Commissioner (Revenue) Aurangabad for hearing and on that date when the Petitioner remained present, he was informed that the member secretary of the Committee was not available and the hearing was adjourned to 23rd August, 2002. On 23rd August, 2002 no hearing took place and the matter was

adjourned to 30th August, 2002. On 30th August, 2002, it has been averred, no opportunity of being heard was given to the Petitioner and he was only asked to sign on the papers in the file and asked to leave. There is no reply to these averments. That apart, it is apparent even from a bare perusal of the impugned order that the Scrutiny Committee has not considered the report of the vigilance cell which at least prima facie supports the claim of the Petitioner. A copy of the report dated 18th July, 2000 has been annexed to these proceedings at Exh.C.

4. In these circumstances, we are constrained to remand the matter back to the Scrutiny Committee once again for a fresh decision. In order to facilitate a fresh decision, we quash and set aside the impugned order of the Scrutiny Committee dated 21st February, 2003. While remitting the matter, we draw the attention of the Scrutiny Committee to the fact that there have already been two remands in these proceedings and it is only to be expected that the Committee would apply its mind carefully after considering all the facts and circumstances of the case and decide the claim of the Petitioner in accordance with law after furnishing an opportunity of being heard to the Petitioner. The Petitioner shall appear before

the Scrutiny Committee for receiving directions on 2nd May, 2006. The Committee shall pass final orders in the matter upon remand within a period of six months thereafter. The Petition is accordingly disposed of.

CHIEF JUSTICE

(DR. D.Y. CHANDRACHUD, J.)